



California Fair Political Practices Commission

December 12, 1985

Peter M. Thorson
City Attorney
City of Azusa
c/o Burke, Williams & Sorensen
624 South Grand Avenue, 11th Floor
Los Angeles, CA 90017

Re: Your Request for advice on
Behalf of Azusa
Councilmembers Moses, Cruz,
Latta and Cook
Our File No. A-85-221

Dear Mr. Thorson:

You have written requesting advice on behalf of four of the five members of the City Council of the City of Azusa. Your request for advice stems from an anticipated land use decision relating to a large parcel of property in the City of Azusa. Each of the four councilmembers owns real property adjacent to or in the vicinity of the subject parcel, for which development into the Azusa Greens/Owl Rock Project (the "project") is proposed.

FACTS

The project is being developed by Johnny E. Johnson and would be located in the northwest section of the City on a site of approximately 152.3 acres of land currently used as a golf course and rock quarry. The proposed development considered by the Azusa Planning Commission in July 1985, would have developed the site into 1,540 residential units and 430,000 square feet of industrial, commercial and office space.

The quarry excavation pits would become passive recreational lakes with landscaping and park facilities constructed around them. Use of the pits for water storage and conservation following quarry excavation is required by agreements between the developer, the Los Angeles County Flood Control

District, and the City, approved in 1964 as part of the quarry approval. The landscaping and park facilities would be constructed as part of the Azusa Greens Project.

The Project site is currently zoned "Community Facilities" and "Water Conservation." The current Land Use Element of the Azusa General Plan designates the site "Community Facilities" and "Conservation." Implementation of the Project would, therefore, require a zone change, general plan amendment and subdivision approval. The Council would be required to approve the zone change and general plan amendment while the Planning Commission would approve the subdivision with an appeal to the Council likely. Additionally, since the golf course construction was a condition precedent to the quarry operation, the Council would also be required to determine the status of this condition prior to approval of the Project.

At the present time, the Project has been withdrawn by Mr. Johnson following the hearing before the Planning Commission. Mr. Johnson is not precluded from refiling the application, however, and members of the community opposing the Project have indicated they anticipate Mr. Johnson will refile for approval sometime in 1986. Mr. Johnson has not disclosed his plans with respect to refiling the application.

Against this background, two members of the City Council have suggested that the question of future use of the golf course property be put to the voters at an election. A councilmember has specifically suggested that the question be presented in the form of an advisory measure, however, the Council does have the option of submitting a proposed zone change ordinance or a request for voter authorization for the City to acquire the golf course site. At my request the Council postponed consideration of this question pending resolution of the potential conflict of interest questions now presented to you.

A potential conflict of interest arises for four of the five Councilmembers by virtue of the fact that these Councilmembers own real property near the project site. Mayor Eugene Moses owns approximately 2.5 acres of commercial property located at 1776 San Gabriel Canyon Road; Councilmember Lucio Cruz owns approximately 1.5 acres of commercial property located

at 1500 San Gabriel Canyon Road as well as a home at 1 Los Olivos Drive; Councilmember Bruce Latta owns a residential condominium located at 317 St. Andrews Lane; and Councilmember James Cook owns a residential condominium located at 398 Cherryhills Lane.

QUESTIONS

You have requested written advice from the staff on the following issues:

1. Would Mayor Moses and Councilmembers Cruz, Latta and Cook be precluded by the Political Reform Act from voting on the various questions necessary for approval of the Azusa Greens Project by virtue of the real property owned by them near the Project in the event the Project application is resubmitted?

2. Are Mayor Moses and Councilmembers Cruz, Latta and Cook precluded by the Political Reform Act from voting on the question of whether to place the issue of future use of the golf course property before the voters at an election as either an advisory question, zone change ordinance, or authority for acquisition by the City of the golf course?

3. If three or more Councilmembers are precluded from voting on these questions, what is the procedure for Council action on the Project and submission of the question to the voters?

4. If three or more councilmembers are precluded from voting on the Project, to what extent, if any, may disqualified members comment on the Project?

ANALYSIS

The Political Reform Act (the "Act")^{1/} requires that public officials disqualify themselves from making or in any way participating in any decision in which they have a financial interest. Section 87100. An official has a financial interest in a decision if the decision will have a reasonably foreseeable material financial effect upon any one of several economic interests of the official and the effect upon the

1/ Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise indicated.

official's economic interest will be distinguishable from the effect upon the public generally. This includes an effect upon:

(b) Any real property in which the public official has a direct or indirect interest worth one thousand dollars (\$1,000) or more.

Section 87103(b).

In the instant case, each of the four councilmembers has an interest in real property which may be affected by the land-use decision in question. In addition, Councilmember Cruz has a bait and tackle shop on his property, and Mayor Moses has the Canyon City Ghost Town amusement center situated on his property. Both of these businesses appear to be the tenants of the respective property owners. Section 87103(c) requires disqualification as to any source of income (including tenants) of \$250 or more during the preceding 12-month period, if the decision will have a reasonably foreseeable material financial effect upon the source. We have not been provided sufficient information to make a determination as to any reasonably foreseeable effects upon the tenants; consequently, our analysis will focus solely on the councilmembers' respective real property interests. However, you should take into consideration the effects upon the tenants in your final analysis, or provide us with sufficient information to provide advice on this point.

Councilmembers Latta and Cook

Councilmembers Latta and Cook each own condominium residences in close proximity to a portion of the parcel in question. Councilmember Cook's residence is within 300 feet of the subject parcel; Councilmember Latta's is within 450 feet. You have advised that their respective condominiums do not have a view of the golf course, which is situated on the portion of the parcel nearest their homes. That portion was proposed to be developed into condominiums.

The relevant question is whether the value of their condominiums will be affected materially. The existing Commission regulation on point is 2 Cal. Adm. Code Section 18702(b)(2) (copy enclosed; a new regulation is being noticed and may alter the standards in the future, a copy is enclosed) which provides that an increase or decrease in value of at least \$1,000 and at least 1/2% or more is material:

(2) Whether, in the case of a direct or indirect interest in real property of one thousand dollars

(\$1,000) or more held by a public official, the effect of the decision will be to increase or decrease:

(A) The income producing potential of the property by the lesser of:

1. One thousand dollars (\$1,000) per month; or
2. Five percent per month if the effect is fifty dollars (\$50) or more per month; or

(B) The fair market value of the property by the lesser of:

1. Ten thousand dollars (\$10,000); or
2. One half of one percent if the effect is one thousand dollars (\$1,000) or more.

You have advised that their respective condominiums are in the \$85,000 price range, hence the \$1,000 figure is the test to be applied. Consequently, disqualification will be required if it is reasonably foreseeable that the value of their condominiums will be affected by at least \$1,000 up or down as a result of the proposed change in land use for the nearby parcel.

However, disqualification would not be required if a significant segment of Azusa's public will be affected in substantially the same manner. 2 Cal. Adm. Code Section 18703. (See also, Legan Opinion, 9 FPFC Opinions 1, No, 85-001, August 20, 1985, copy enclosed.) Because of the close proximity of their homes to the project, it is possible that the magnitude of the effects upon their real property interests will not be substantially the same as the magnitude of the effects upon the real property interests of a significant segment of the general public in Azusa. In such a case, disqualification would be required. However, if only general market price effects will occur due to increased jobs or housing supply, most likely all homeowners in Azusa will be affected in substantially the same manner. (See, Owen Opinion, 2 FPFC Opinions 77, No. 76-005, June 2, 1976, copy enclosed.) In the latter case, disqualification would not be required. Thus whether disqualification is required is really a factual question which you must determine.

Councilmember Cruz

Councilmember Cruz owns a 1.5 acre parcel of commercial property situated approximately 800 feet to the west of the subject parcel. In addition he owns his single-family residence located 1,000 feet east of the subject parcel. The same test must be applied to both his parcels as for the Latta and Cook properties. However, in the case of Councilmember Cruz' commercial property, it is clear that his interest will be affected in a manner which is distinguishable from the effect upon the public generally. See Owen Opinion, supra, and Legan Opinion, supra. Consequently, if it is reasonably foreseeable that the effect of the proposed land-use changes for the subject parcel will affect Councilmember Cruz' commercial property value by at least 1/2%, up or down, or by at least \$10,000, whichever is less, disqualification will be required.

Mayor Moses

Mayor Moses owns a 2.5 acre parcel which abuts directly on a portion of the subject parcel. It is virtually inconceivable that a project of the size and scope that is proposed here would not have a reasonably foreseeable material financial effect upon Mayor Moses' real property interest. Consequently, Mayor Moses will be required to disqualify himself from any participation in the Council's deliberations on the requested land-use changes if and when those come before the Council. In addition, he may not use his official position to influence the Council's decision, the Planning Commission's decision or the Planning Department's staff recommendations.^{2/} However, Mayor Moses may address either the Planning Commission or the City Council speaking on his own behalf as any other member of the audience.^{3/} See, 2 Cal. Adm. Code Section 18700.1(b)(1)(A), copy enclosed. In addition, Mayor Moses may communicate with the press or with his constituents on these issues.^{4/} See, 2 Cal. Adm. Code Section 18700.1(b)(2).

Legally Required Participation

You have asked how the Council may proceed if a majority of its members are disqualified as to this particular matter. The

^{2/} The same will be true for the other councilmembers if it is determined that they must disqualify themselves.

^{3/} Id.

^{4/} Id.

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Commission has addressed that question in its Hudson Opinion, 4 FPPC Opinions 13, No. 77-007, February 7, 1978, and its Brown Opinion, 4 FPPC Opinions 19, No. 77-024, February 7, 1978 (copies enclosed). As you can see, if 3 or 4 of the councilmembers are disqualified, a sufficient number may be "rehabilitated" to reestablish a quorum for the conduct of the Council's business on this subject.

You have also asked a follow-up question as to whether the random-lot selection prescribed in the Hudson Opinion for "rehabilitation" could be done once for the series of decisions which will necessarily be involved. As I explained to you on the telephone, this may be done so long as the basis for the disqualifications does not change in mid-stream. See Advice Letter to William Hopkins, No. A-82-088, copy enclosed.

Referendum

You have also asked whether councilmembers who might otherwise be disqualified from participation in the Council's deliberations on the project may be permitted to participate in a decision to put the matter before the voters, either as an actual zoning ordinance or as an advisory vote.

Given the unique facts of this situation,^{5/} once the language of the proposed voter referendum has been settled upon, without the participation of disqualified councilmembers, all councilmembers may participate in the vote to decide to place the measure before the voters. However, because the precise wording of the measure could affect their interests,^{6/} the disqualification and rehabilitation standards outlined

^{5/} Our advice is based upon the unique facts and procedural posture of this situation. Therefore, our advice in this instance should not be applied to other situations where the issue involves placing a matter before the voters. In many circumstances, the decision to do so is a de facto determination of the overall issues and, therefore, would require disqualification.

^{6/} For instance, Councilmembers Latta and Cook might propose a measure to maintain the parcel near to them as a golf course or as a greenbelt (it's now part of the golf course) while permitting development on the other portions of the property. The decision to put forth such wording, as opposed to alternative wordings could affect their interests.

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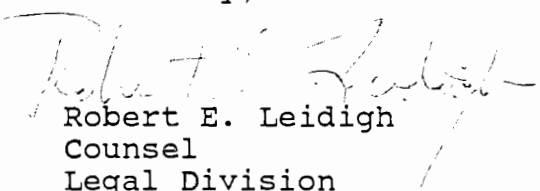
above must be applied to the deliberations on the wording of the measure.

In the case of an advisory measure, since the ultimate decision will be made by the Council, and not the voters, disqualification will be required at that time, pursuant to the foregoing discussion.

In the case of an actual voter-approved general plan amendment or zoning ordinance, it is the voters who are making the final (and intervening, substantive) decision, not the councilmembers. Of course, once the decision is made to place the matter before the voters, each councilmember is free to address the voters on the merits of the issue.^{7/}

I trust that this letter has responded to the questions you have presented. If you have any further questions regarding the foregoing, I may be reached at (916) 322-5901.

Sincerely,



Robert E. Leidigh
Counsel
Legal Division

REL:plh
Enclosure

^{7/} Of course, public funds may not be expended in the campaign. See, Stanson v. Mott (1976), 17 Cal. 3d 206; 130 Cal. Rptr. 697; 551 P.2d 1.

LAW OFFICES
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November 18, 1985

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Legal Division
California Fair Political
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428 J Street, Suite 800
P.O. Box 807
Sacramento, California 95804-0807

Re: Request for Advice on Behalf of Mayor
Moses and Councilmembers Cruz, Latta and
Cook of the City of Azusa
Your File No.: A-85-221

Dear Mr. Leidigh:

In response to your letter of November 1, 1985
I have collected the following information for your
review in connection with our request for advice:

1. Enclosed are the Statement of Economic
Interest forms (Form 721) for Mayor Moses and Council-
members Cruz, Latta and Cook.

2. The commercial property of Mayor Moses is
currently being used as the Canyon City Ghost Town. This
is an amusement center which is rented out or donated to
various groups during the year. The property is zoned C-3
(General Commercial Zone). I am enclosing copies of
Chapter 19.24, Restricted Commercial Zone (C-2) and 19.26,
General Commercial Zone (C-3), of the Azusa Municipal Code
as these chapters govern the allowable uses of the Mayor's
property.

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3. Councilmember Cruz's commercial property on San Gabriel Canyon Road is currently the site of a bait and tackle shop. It is zoned C-2 Restricted Commercial Zone.

4. The portion of the Johnson property to be developed closest to Councilmember Latta's property and Councilmember Cook's property is currently being used as a golf course. The development proposed designates this area as "multi-family residential". The proposal does not state whether that property would be developed as condominiums, townhomes or apartment units.

If you have any further questions concerning this matter, please feel free to call me at any time. Thank you for your assistance in this matter.

Very truly yours,

Peter M. Thorson
for BURKE, WILLIAMS & SORESENSEN

PMT:rp

cc: Mayor Moses
Councilmember Cruz
Councilmember Latta
Councilmember Camarena
Councilmember Cook

LAW OFFICES
BURKE, WILLIAMS & SORENSEN

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October 23, 1985

HARRY C. WILLIAMS
(1912-1967)

ROYAL M. SORENSEN
(1914-1983)

OF COUNSEL
DWIGHT A. NEWELL
GEORGE W. WAKEFIELD

*PROFESSIONAL CORPORATION

Ms. Barbara Milman
General Counsel
Fair Political Practices Commission
Post Office Box 807
Sacramento, CA 95804

Re: Request for Advisory Letter - City of Azusa

Dear Ms. Milman:

I am the City Attorney for the City of Azusa and am requesting an advisory letter opinion from the legal staff of the Commission on a number of potential conflict of interest questions arising from the proposed Azusa Greens/Owl Rock Project in the City of Azusa.

The project is being developed by Johnny E. Johnson and would be located in the northwest section of the City on a site of approximately 152.3 acres of land currently used as a golf course and rock quarry. The proposed development considered by the Azusa Planning Commission in July 1985, would have developed the site into 1,540 residential units and 430,000 square feet of industrial, commercial and office space.

The quarry excavation pits would become passive recreational lakes with landscaping and park facilities constructed around them. Use of the pits for water storage and conservation following quarry excavation is required by agreements between the developer, the Los Angeles County Flood Control District, and the City, approved in 1964 as part of the quarry approval. The landscaping and park facilities would be constructed as part of the Azusa Greens Project.

Ms. Barbara Milman
General Counsel
October 23, 1985
Page 2

The Project site is currently zoned "Community Facilities" and "Water Conservation." The current Land Use Element of the Azusa General Plan designates the site "Community Facilities" and "Conservation." Implementation of the Project would, therefore, require a zone change, general plan amendment and subdivision approval. The Council would be required to approve the zone change and general plan amendment while the Planning Commission would approve the subdivision with an appeal to the Council likely. Additionally, since the golf course construction was a condition precedent to the quarry operation, the Council would also be required to determine the status of this condition prior to approval of the Project.

At the present time, the Project has been withdrawn by Mr. Johnson following the hearing before the Planning Commission. Mr. Johnson is not precluded from refiling the application, however, and members of the community opposing the Project have indicated they anticipate Mr. Johnson will refile for approval sometime in 1986. Mr. Johnson has not disclosed his plans with respect to refiling the application.

Against this background, two members of the City Council have suggested that the question of future use of the golf course property be put to the voters at an election. A councilmember has specifically suggested that the question be presented in the form of an advisory measure, however, the Council does have the option of submitting a proposed zone change ordinance or a request for voter authorization for the City to acquire the golf course site. At my request the Council postponed consideration of this question pending resolution of the potential conflict of interest questions now presented to you.

A potential conflict of interest arises for four of the five Councilmembers by virtue of the fact that these Councilmembers own real property near the project site. Mayor Eugene Moses owns approximately 2.5 acres of commercial property located at 1776 San Gabriel Canyon Road; Councilmember Lucio Cruz owns approximately 1.5 acres of commercial property located at 1500 San Gabriel Canyon Road as well as a home at 1 Los Olivos Drive; Councilmember Bruce Latta owns a residential condominium located at 317 St. Andrews Lane; and Councilmember James Cook owns a residential condominium located at 398 Cherryhills Lane. I have attached for your convenience a zoning map prepared by

Ms. Barbara Milman
General Counsel
October 23, 1985
Page 3

the Azusa Planning Department which depicts the Project site and the properties owned by these various Councilmembers.

Accordingly, I am requesting an opinion from the legal staff on the following issues:

1. Would Mayor Moses and Councilmembers Cruz, Latta and Cook be precluded by the Political Reform Act from voting on the various questions necessary for approval of the Azusa Greens Project by virtue of the real property owned by them near the Project in the event the Project application is resubmitted?

2. Are Mayor Moses and Councilmembers Cruz, Latta and Cook precluded by the Political Reform Act from voting on the question of whether to place the issue of future use of the golf course property before the voters at an election as either an advisory question, zone change ordinance, or authority for acquisition by the City of the golf course?

3. If three or more Councilmembers are precluded from voting on these questions, what is the procedure for Council action on the Project and submission of the question to the voters?

4. If three or more councilmembers are precluded from voting on the Project, to what extent, if any, may disqualified members comment on the Project?

Pursuant to my telephone conversation with Katherine Donovan of your office, I am submitting the following materials to aid your review of these questions: 1) Staff report on the project; 2) Draft Environmental Impact Report on the project (July, 1985); 3) the City's zoning map showing the project site and the location of property belonging to the Councilmembers in the vicinity of the project; 4) Minutes of the Planning Commission hearing on the Project; and 5) correspondence dated July 11, 1985 from Eric Olson to the Planning Commission. Additionally, pursuant to Ms. Donovan's request, the mailing addresses of the Councilmembers involved are as follows:

Mayor Eugene Moses
285 E. Sierra Madre Avenue
Azusa, CA 91702

Ms. Barbara Milman
General Counsel
October 23, 1985
Page 4

Councilmember Lucio Cruz
1 Los Olivos Drive
Azusa, CA 91702

Councilmember Bruce Latta
965 E. Armistead
Azusa, CA 91702

Councilmember James Cook
1035 N. Orange
Azusa, CA 91702

The Planning Commission held a public hearing on July 17, 1985, on the proposed zone change, general plan amendment and the Draft Environmental Impact Report for the Project. Considerable opposition to the project was voiced by the residents living nearby and many comments were made regarding the Draft Environmental Impact Report. Since the developer withdrew the application, the Draft Environmental Impact Report has not been certified and the consultants who prepared the Draft Environmental Impact Report did not prepare an addendum addressing the comments made at the public hearing. I have, however, enclosed the correspondence from Eric Olson which summarizes the concerns expressed by many persons at the public hearing about the Draft Environmental Impact Report as well as the minutes summarizing the public comments.

Should you have any further questions or desire any additional materials on the project, I would be pleased to respond to your request.

Very truly yours,

PETER M. THORSON for
BURKE, WILLIAMS & SORENSEN

PMT:rs:wpc

encls.

cc: Mayor Eugene Moses
Councilmember Lucio Cruz
Councilmember Bruce Latta
Councilmember James Cook
Councilmember Armando L. Camarena
City Administrator Lloyd Wood



California Fair Political Practices Commission

November 1, 1985

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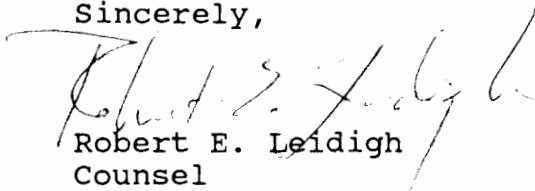
Re: Your Request for Advice on
Behalf of Mayor Moses, and
City Councilmembers Cruz,
Latta and Cook
Our File No. A-85-221

Dear Mr. Thorson:

I am in receipt of your letter requesting advice on behalf of four of the five members of the Azusa City Council. Before I can respond to question 1, I will need more information regarding the councilmembers' various economic interests. Please provide me with copies of their current Statement of Economic Interest; and, for Mayor Moses and Councilmember Cruz, please specify the type of commercial use for their respective parcels of commercial property. Do they have businesses which are located there or do they have tenants who conduct businesses there? If the latter, please specify as these tenants will constitute sources of income to them. For Councilmembers Latta and Cook, what is the specific use proposed for the portion of the subject property which is closest to their condominium residences? What is the current use on that portion of the property?

If you have any questions regarding this letter, I may be reached at (916) 322-5901.

Sincerely,


Robert E. Leidigh
Counsel
Legal Division

REL:plh

cc: Mayor Moses
Councilmember Cruz
Councilmember Latta
Councilmember Cook